

REMARKS

Claims 1-24 are pending in the above-identified application. Claims 1-24 have been rejected. With this Amendment, claims 1 and 21 are amended. Support for this amendment can be found throughout the specification, for example, at Figures 1-6 and paragraphs [0005], [0009]-[0014] and [0019] as originally filed, and Figures 7 and 8 and corresponding description of the drawings filed May 27, 2009 as part of Response to Non-Final Office Action dated January 27, 2009. Claims 1 and 22-24 are amended to correct typographic errors. The errors and the correction are obvious to a person of ordinary skill in the art. Therefore, no new matter is added by way of this amendment. Accordingly, claims 1-24 are at issue.

As an initial issue, in “Response to Arguments” of the instant Office Action, the Examiner has rejected Applicants’ arguments filed 05/27/09 with respect to Testi (USPN 2,288,979, hereafter referred to as Testi) and Alltop *et al.* (USPN 3,308,989, hereafter referred to as Alltop). The Examiner states that in the blade receptacle system described in Testi,

the biasing element does not act as part of the strip movement section but more as part of the body itself. The biasing element acts to restrict movement of the flat elements stored in the body and does not act to dispense or move said strips relative to said body. As such the strip movement section of Testi only includes the dispensing wheel which rotates to move the stored flat articles relative to the body and through the dispensing opening.

The Examiner also states that in the business card dispenser described in Alltop

the spring retainer element does not act as part of the strip movement section but more as part of the body itself. The spring retainer element acts to restrict movement of the flat elements stored in the body and does not act to dispense or move said strips relative to said body. The elements of the pusher plate and the actuator can be considered a single element as they are rigidly affixed to one another and act as a single piece. As such the strip movement section of Alltop only includes a single dispensing element to move the stored flat articles relative to the body and through the dispensing opening.

The Examiner further states that “applicant has indicated in all of his drawing that the pressing elements include multiple elements and as such multiple elements move to assist in dispensing of the article therefore any number of elements can be grouped and called the pressing element as shown in applicants drawings.” Applicants respectfully disagree. However,

to advance the prosecution, Applicants have amended claims 1 and 21 to recite, in the relevant part, that the body of the strip ejection system or device comprises an opposing surface opposite the strip movement section or the pressing element, wherein the opposing surface is immovable.

Rejection of Claims Under 35 U.S.C. §102

Claims 1-8 and 21-24 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Testi. Specifically, the Examiner states that

Testi discloses a dispenser comprising a main body and a textured dispensing cylinder, said cylinder being mounted in a channel to allow movement of the cylinder vertical movement relative to the plane of a stack of articles. Testi discloses dispensing strips of metal which can be tested and held at one or more positions. The dispensing device presses against a side of the article being dispensed, and said side can be considered a top, bottom, or side depending on how it is defined. Though Testi does not disclose dispensing a test strip it is capable of dispensing such an item.

Applicants respectfully disagree.

In addition, claims 1-5, 12-17 and 19-24 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Alltop. The Examiner states that

Alltop discloses a dispenser comprising a main body and a thumb actuated pressed dispensing element. The dispensing element includes slots and protrusions for guiding the element and stopping its movement at first and second positions and a protrusion for contacting the strip. The dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Though Alltop does not disclose dispensing a test strip it is capable of dispensing such an item.

Applicants respectfully disagree.

The Law of Anticipation

Anticipation under Section 102 can be found only if a reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985). More particularly, a finding of anticipation requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention. *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). “To anticipate, every element and limitation of the claimed invention

must be found in a single prior art reference, arranged as in the claim.” *Brown v. 3M*, 265 F.3d 1349 (Fed. Cir. 2001).

Amended claim 1 is directed to a strip ejection system for holding and ejecting a strip which comprises a body and a strip movement section. The body comprises an opposing surface opposite the strip movement section, wherein the opposing surface is immovable. The strip movement section comprises a pressing element which is the only element of the strip movement section movable relative to the body. In operation, the pressing element is pressed against a face of a strip by an operator to make contact with the strip which is supported on the immovable opposing surface. The pressing element is then moved by the operator, while maintaining contact with the strip, such that the strip is transported from the first position to the second position by the operator’s movement.

Amended claim 21 teaches a device which comprises a body, a pressing element and a diagnostic test strip. The body comprises an opposing surface opposite the pressing element, wherein the opposing surface is immovable. In operation, the pressing element is pressed against a face of a strip by an operator to make contact with the strip. A friction force between a surface of the pressing element and at least one surface of the strip against which the surface of the pressing element is pressed transports the strip from a first position to a second position.

Testi

Testi discloses a blade receptacle designed and intended to handle double-edged safety razor blades, each of which has a longitudinal central slot (39). The blade receptacle comprises a cover (10) with a delivery slot (13), a roll (15) with a concentric flange or collar (16), and a bowed leaf spring (17). The delivery slot (13) at the upper edge of the receptacle is of such width as to permit the passage of only one blade at a time. The roll (15) is of such diameter as to extend into engagement with the uppermost one of a stack of blades when the roll (15) is depressed to the bottom of its bearing slots (14). The flange or collar (16) extends at all times into the slot in the blade stack provided by the aligned slots (39) of the individual blades. In using the blade receptacle, it is necessary to rotate the roll (15) in the proper direction by drawing a thumb or finger across the roll (15). Only the uppermost blade can advance out through the delivery slot (13). The movement of the uppermost blade is guided by the action of the flange or

collar (16) of the roll (15) as the edges of the slot (39) travel past the flange or collar (16). The bowed leaf spring (17) is located in the bottom of the receptacle and acts normally to lift and maintain the stack so that its uppermost blade is in yielding contact with the inner face of the cover (10).

The deficiency of Testi compared to amended claim 1 is at least the following. The blade receptacle disclosed in Testi comprises a delivery slot (13) at the upper edge of the receptacle, wherein the delivery slot (13) is of such width as to permit the passage of only one blade at a time. The blade receptacle relies on the bowed leaf spring (17) to lift and maintain the stack of blades so that its uppermost blade is in yielding contact with the inner face of the cover (10) and is advanced out through the delivery slot (13) by the movement of the feed roll (15). Therefore, the deflection of the bowed leaf spring (17) relative to the cover (10) changes depending on the number of blade(s) left in the blade receptacle. See, for example, lines 32-46 of the left column on page 2, and Figures 1-3. In contrast, the strip ejection system disclosed in amended claim 1 comprises an immovable opposing surface opposite the strip movement section which does not deflect or move relative to the body of the system. There are other deficiencies in the blade receptacle disclosed in Testi compared to the system disclosed in amended claim 1. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

Accordingly, Testi does not disclose each and every limitation of amended claim 1. Claims 2-8 depend from amended claim 1 and include all the limitations of amended claim 1. Therefore, Testi does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that amended claim 1 and claims 2-8 are not anticipated by Testi.

The deficiency of Testi compared to amended claim 21 is at least that, as discussed above, the blade receptacle described in Testi relies on the bowed leaf spring (17) to lift and maintain the stack of blades so that its uppermost blade is in yielding contact with the inner face of the cover (10) and is advanced out through the delivery slot (13) by the movement of the feed roll (15). Accordingly, the deflection of the bowed leaf spring (17) relative to the cover (10) changes depending on the number of blade(s) left in the blade receptacle. In contrast, the device disclosed in amended claim 21 comprises an immovable opposing surface opposite the pressing element which does not deflect or move relative to the body of the device. There are other deficiencies in the blade receptacle disclosed in Testi compared to the device disclosed in

amended claim 21. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

Accordingly, Testi does not disclose each and every limitation of amended claim 21. Amended claims 22-24 depend from amended claim 21 and include all the limitations of amended claim 21. Therefore, Testi does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that amended claims 21-24 are not anticipated by Testi.

In view of the foregoing, Testi does not anticipate amended claim 1, claims 2-8 or amended claims 21-24. Reconsideration and withdrawal of the rejection of these claims under 35 U.S.C. §102(b) over Testi is respectfully requested.

Alltop

Alltop teaches a business card dispenser. The business card dispenser comprises a main frame (16) with a top wall (17), a rectangular spring retainer (40), an actuator (13), a pusher plate (44) with a shoulder (51) at the trailing edge (50) of the pusher plate (44), and a slot (38) defined by the lip (28) of the top wall (17) and an edge (53) of an end wall (35). The width of the slot (38) is such that only one business card can be pushed through the slot (38) below the lip. The rectangular spring retainer (40) urges a stack of business cards toward the top wall (17). The shoulder (51) of the pusher plate (44) has a depth substantially equal to the thickness of a comparatively thin business card so that only one card can be dispensed at a time. The pusher plate (44) is mounted on for reciprocation with the actuator (13). As the actuator (13) is moved from one side to another side, the shoulder (51) engages the uppermost card of the stack and forces it along the top wall (17) through the slot (38).

The deficiency of Alltop compared to amended claim 1 is at least the following. The business card dispenser comprises a slot (38) defined by the lip (28) of the top wall (17) and an edge (53) of an end wall (35) through which only the uppermost business card of a stack can be dispensed. The business card dispenser relies on the spring retainer (40) to urge the stack of cards towards the top wall (17). Therefore, the deflection of the spring retainer (40) relative to the main frame (16) with a top wall (17) changes depending on the number of business card(s) left in the business card dispenser. See, for example, lines 57-70 of column 1, the last paragraph

of column 2, the paragraph bridging columns 3 and 4, claims 1-4 and Figures 2-6. In contrast, the strip ejection system disclosed in amended claim 1 comprises *an immovable opposing surface opposite the strip movement section which does not deflect or move relative to the body of the system*. There are other deficiencies in Alltop compared to the system disclosed in claim 1. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

Accordingly, Alltop does not disclose each and every limitation of amended claim 1. Claims 2-5 and 12-17 depend from amended claim 1 and include all the limitations of amended claim 1. Therefore, Alltop does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that claims 1-5, 12-17 and 19-20 are not anticipated by Alltop.

The deficiency of Alltop compared to amended claim 21 is at least that, as discussed above, the business card dispenser described in Alltop relies on the *spring retainer (40)* to urge the stack of cards towards the top wall (17) and only the uppermost business card is pushed through the slot (38) by the pusher plate (44). Accordingly, the *deflection of the spring retainer (40) relative to the main frame (16) with a top wall (17) changes* depending on the number of business card(s) left in the business card dispenser. In contrast, the device disclosed in amended claim 21 comprises *an immovable opposing surface opposite the strip movement section which does not deflect or move relative to the body of the device*. There are other deficiencies in the business card dispenser disclosed in Alltop compared to the device disclosed in amended claim 21. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

Accordingly, Alltop does not disclose each and every limitation of amended claim 21. Amended claims 22-24 depend from amended claim 21 and include all the limitations of amended claim 21. Therefore, Alltop does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that amended claims 21-24 are not anticipated by Alltop.

In view of the foregoing, Alltop does not teach each and every limitation of amended claim 1, claims 2-5, 12-17, 19-20 and amended claims 21-24. Reconsideration and withdrawal of the rejection of these claims under 35 U.S.C. §102(b) over Alltop is respectfully requested.

Rejection of Claims Under 35 U.S.C. §103

Claims 9-11 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Testi in view of Wajda (U.S. Patent Application Publication No. 2003/0121932, hereafter referred to as Wajda). Specifically, the Examiner states that “Testi discloses the dispenser as claimed in claims 1-8.” The Examiner acknowledges that “Testi does not disclose a ball shaped dispenser.” The Examiner states that “Wajda teaches a ball shaped dispenser wheel.” The Examiner concludes that “[i]t would be obvious to one skilled in the art to modify the dispenser of Testi to use a ball instead of a cylinder as it is an art recognized alternative.” Applicants respectfully disagree.

Standard for Obviousness

The Patent and Trademark Office has the burden under section 103 to establish a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-87 (Fed. Cir. 1984). In the recent decision by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007), the Supreme Court reaffirmed the framework for determining obviousness as set forth in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). See MPEP §2141 and §2143. To establish a *prima facie* case of obviousness, three basic criteria must be met: first, the prior art reference (or references when combined) must teach or suggest each element claimed; second, one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; finally, one of ordinary skill in the art would have recognized that the results of the combination were predictable. See MPEP §2143.

An essential characteristic of any *prima facie* case of obviousness is that the references, when combined must teach or suggest each element claimed. The present rejection fails to make a *prima facie* case of obviousness because the references in combination fail to supply at least one element common to all of the claims in consideration.

Wajda discloses a dispenser for flat articles. The dispenser comprises a container (12 in Figure 1, 40 in Figure 2, or 60 in Figure 3) holding flat articles, an operation element for a user to maneuver (20 in Figure 1, 42 in Figure 2, or 62 in Figures 3 and 6), and a pressing means (16 in Figure 1, 42 in Figure 2, or 70a and b in Figure 3). In some embodiments, the pressing

element is connected to the operation element. In other embodiments, the pressing element is mounted onto a movable mounting means.

The deficiency of Testi compared to amended claim 1 has been discussed above. Wajda fails to remedy the deficiency for at least the following reason. Wajda does not teach an immovable opposing surface opposite the strip movement section which can be combined with the receptacle described in Testi. An immovable opposing surface opposite the strip movement section is not compatible with the operation mechanism of the blade receptacle described in Testi, as discussed above. The blade receptacle described in Testi relies on the bowed leaf spring (17) to lift and maintain the stack of blades so that its uppermost blade is in yielding contact with the inner face of the cover (10) and is advanced out through the delivery slot (13) by the movement of the feed roll (15). The deflection of the bowed leaf spring (17) relative to the cover (10) changes depending on the number of blade(s) left in the blade receptacle.

Moreover, Applicants respectfully submit that Wajda does not teach a ball-shaped pressing element. Instead, Wajda teaches a cylinder-shaped roller or wheel. See, for example, Figs. 1B, 2A, 2C, and 5.

There are other deficiencies in the disclosure of Wajda compared to the device disclosed in amended claim 1. Applicants reserve the right to argue these and other deficiencies of Wajda in future prosecution if needed.

Accordingly, Testi and Wajda, either alone or in combination, do not teach or suggest each element of amended claim 1. Claims 9-11 depend from amended claim 1 and include all the limitations of amended claim 1. Accordingly, Testi and Wajda, either alone or in combination, do not teach or suggest each element of these dependent claims. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection to these claims under 35 U.S.C. §103(a) over Testi in view of Wajda.

Objection to Claim 18

Claim 18 has been objected to as allegedly being dependent from a rejected base claim. The Examiner has acknowledged that claim 18 contains allowable subject matter. Claim 18 depends from claim 13, which depends from claim 12, which, in turn, depends from amended claim 1. Applicants respectfully submit that in view of the foregoing discussion amended

claim 1 is not anticipated by Testi or Alltop, and claims 12 and 13 are not anticipated by Alltop. Accordingly, Applicants respectfully request the objection to claim 18 be reconsidered and withdrawn.

CONCLUSION

Applicants submit that the present Application is in condition for allowance and respectfully request the same. If any issues remain, the Examiner is cordially invited to contact Applicants' representative at the number provided below in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 04-0258.

Respectfully submitted,
Chambers, *et al.*
DAVIS WRIGHT TREMAINE LLP

Dated: September 29, 2009 By: /Sheila R. Gibson/
Sheila R. Gibson
Registration No. 54,120
Attorney of Record

505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Phone: (213) 633-8670
Facsimile: (415) 276-6599